

To:

Griffith Hack
GPO Box 1285K
MELBOURNE VIC 3001

PCT

WRITTEN OPINION OF THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY (PCT Rule 66)

Date of mailing
(day/month/year) 8 JUN 2005

Applicant's or agent's file reference
FP19468

REPLY DUE within **ONE MONTH**
from the above date of mailing

International application No.
PCT/AU2004/000505

International filing date (day/month/year)
16 April 2004

Priority date (day/month/year)
17 April 2003

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ G01B 11/02, G01N 9/00

Applicant

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION et al

☒ The written opinion established by the International Searching Authority:

☒ is ☐ is not

considered to be a written opinion of the International Preliminary Examining Authority.

2. This **third** (second, etc.) opinion contains indications relating to the following items:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input checked="" type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input type="checkbox"/> Box No. V | Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

The applicant is hereby invited to reply to this opinion.

When? See the Reply Due date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the Final Date by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. If no response is filed by 1 month before the Final Date, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least 3 months before the Final Date by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

4. The FINAL DATE by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 17 August 2005

Name and mailing address of the IPEA/AU
AUSTRALIAN PATENT OFFICE
PO BOX 200, WODEN ACT 2606, AUSTRALIA
E-mail address: pct@ipaustralia.gov.au
Facsimile No. (02) 6285 3929

Authorized Officer

LYNN BLOOMFIELD
Telephone No. (02) 6283 2851

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000505

Box No. I **Basis of the opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion is based on a translation from the original language into the following language ,
which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this opinion has been established on the basis of *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed.")*:
- ☐ the international application as originally filed/furnished
- ☒ the description: pages **1 - 21**, as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☒ the claims: pages , as originally filed/furnished
pages , as amended (together with any statement) under Article 19,
pages **22 - 31**, received by this Authority on **13 May 2005** with the letter of **13 May 2005**
pages , received by this Authority on with the letter of
- ☒ the drawings: pages **1/7 - 7/7**, as originally filed/furnished
pages , received by this Authority on with the letter of
pages , received by this Authority on with the letter of
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):
4. ☒ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
- ☒ the claims, Nos. **4, 5, 30 - 32**
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000505

Box No. III **Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos: 4, 5, 30 - 32

because:

☐ the said international application, or the said claim Nos.

relate to the following subject matter which does not require an international preliminary examination (*specify*):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos.
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos.
are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claim Nos.

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form ☐ has not been furnished

☐ does not comply with the standard

the computer readable form ☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☒ See Supplemental Box for further details.

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000505

Box No. V **Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims 1 – 3, 6 – 29, 33 – 53	YES
	Claims	NO
Inventive step (IS)	Claims 1 – 3, 6 – 29, 33 – 53	YES
	Claims	NO
Industrial applicability (IA)	Claims 1 – 3, 6 – 29, 33 – 53	YES
	Claims	NO

2. Citations and explanations:

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1: US 2002/0117274

D2: FR 2512196

D3: US 6407819

Novelty (N), Inventive Step (IS)

Claims 1 – 3, 6 – 29 & 33 – 53 meet the criteria for novelty and inventive step. D1, which is considered to be the closest prior art, discloses a method and apparatus for determining the fibre fineness of *individual* fibres.

However, this document, either individually or in obvious combination with either D2 or D3, does not disclose or suggest a method or apparatus for measuring fibre fineness of a sample of fibres in which an image of at least some of the fibres is captured, the total length of the fibres in the image is measured using image analysis and the fineness of the entire sample is calculated based on the measured length.

WRITTEN OPINION OF THE
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International Application No.

PCT/AU2004/000505

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: Box I, Item 4 & Box III

Claims 4, 5 & 30 – 32 are considered to contain matter which goes beyond the disclosure as filed.

Claim 4 defines a specific step in the method relating to the calculation of the total length of fibres in the *sample*. However, the description is entirely silent as to this step in the method. Calculations of the total length of fibres in a particular *image* are disclosed at several points in the description, however, no mention is ever made in the description as filed of using this calculation of fibre length in an image to obtain a total length of fibres in the *entire sample*. It is this step of calculating the total length of fibres in the *sample* which renders the amendment to claim 4 un-allowable, regardless of how the total length of the *sample* is calculated.

Claim 5 is directly dependent on claim 4 and is therefore not allowable for the same reasons.

Claim 30 includes features relating to the calculation of the total length of fibres in the *sample*, and is not allowable for the reason stated above in relation to claim 4.

Claims 31 & 32 are directly dependent on claim 30 and are therefore not allowable for the same reasons.

Note that claims 6 – 28 & 33 – 53 are allowable insofar as they include the option of being appended directly to either claim 1 or claim 29 without including the new matter of claims 4 or 30.